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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY A. SHELLY,

Defendant.

09-CR-0089-RHW

Plea Agreement

Plaintiff, United States of America, by and through James A. McDevitt,
United States Attorney for the Eastern District of Washington, and Stephanie J.
Lister, Assistant United States Attorney for the Eastern District of Washington,
and Defendant TIMOTHY A. SHELLY and the Defendant's counsel, Roger Peven
and Amy H. Rubin, agree to the following Plea Agreement:

1. Guilty Plea and Maximum Statutory Penalties:

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Defendant, TIMOTHY A.
SHELLY, agrees to plead guilty to Count 1 and Count 3 of the Indictment filed on
June 23, 2009, charging the Defendant with Coercion of a Minor, in violation of
18 U.S.C. § 2422(b)(Count 1), and Travel with Intent to Have Sex with a Minor,
in violation of 18 U.S.C. § 2423(b)(Count 3).

The Defendant, TIMOTHY A. SHELLY, understands that the following are
the minimum and maximum statutory penalties for these offenses:

- (a). Coercion of a Minor, in violation of 18 U.S.C. § 2422(b), is a
Class B felony charge and carries a penalty of not less than 5
years nor more than 30 years imprisonment; a fine not to

1 exceed \$250,000; a term of supervised release of not more than
2 life; and a \$100 special penalty assessment.

3 (b). Travel with Intent to Have Sex with a Minor, in violation of 18
4 U.S.C. § 2423(b), is a Class B felony charge and carries a
5 maximum penalty of not more than 30 years imprisonment; a
6 fine not to exceed \$250,000; a term of supervised release of not
7 more than life; and a \$100 special penalty assessment.

8 The Defendant, TIMOTHY A. SHELLY, understands sentences for these
9 charges may be imposed consecutively by the Court.

10 The Defendant, TIMOTHY A. SHELLY, also understands that a violation
11 of a condition of supervised release carries an additional penalty of re-
12 imprisonment for all or part of the term of supervised release without credit for
13 time previously served on post-release supervision.

14 2. The Court becomes Bound by the Plea Agreement When it Accepts
15 the Agreement:

16 This Plea Agreement is entered into under Fed. R. Crim. P. 11(c)(1)(C).
17 Defendant, TIMOTHY A. SHELLY, understands that the court may accept this
18 Plea Agreement, reject it, or defer its decision until a Presentence Report (PSR)
19 has been reviewed.¹ If the court accepts this agreement, the court will be bound to
20 impose a sentence in accordance with the provisions hereof. If the court rejects

21 ¹ The district court must accept the Defendant's guilty plea before
22 reviewing the PSR. It is error for the court to review the PSR before it has
23 actually accepted the plea (as opposed to reviewing the PSR and then accepting
24 and agreeing to be bound by the plea agreement under Rule 11(c)(1)(C)). See In
25 re: James H. Gallaher, Jr., WL 4877454, (9th Circuit), November 13, 2008 (NO.
26 07-74593).

1 this plea agreement, Defendant shall have the right to withdraw his guilty plea,
2 and the parties shall be free to proceed as if this agreement did not exist. As well,
3 the United States may withdraw from this Plea Agreement if the Court imposes a
4 lesser sentence than agreed upon.

5 3. Waiver of Constitutional Rights:

6 The Defendant, TIMOTHY A. SHELLY, understands that by entering this
7 plea of guilty the Defendant is knowingly and voluntarily waiving certain
8 constitutional rights, including:

- 9 (a). The right to a jury trial;
10 (b). The right to see, hear and question the witnesses;
11 (c). The right to remain silent at trial;
12 (d). The right to testify at trial; and
13 (e). The right to compel witnesses to testify.

14 While the Defendant is waiving certain constitutional rights, the Defendant
15 understands the Defendant retains the right to be assisted through the sentencing
16 and any direct appeal of the conviction and sentence by an attorney, who will be
17 appointed at no cost if the Defendant cannot afford to hire an attorney.

18 4. Elements of the Offenses:

19 The United States and the Defendant agree that in order to convict the
20 Defendant of Count 1, Coercion of a Minor, in violation of 18 U.S.C. § 2422(b),
21 the United States would have to prove beyond a reasonable doubt the following
22 elements:

- 23 (a). First, on or about January 2005 through on or about September
24 2005, in Republic, in the Eastern District of Washington, the
25 Defendant, TIMOTHY A. SHELLY, knowingly used a
26 computer to attempt to persuade, induce, entice or coerce an
27 individual under the age of eighteen (18) to engage in sexual
28 activity;

1 (b). Second, the Defendant believed that such individual was less
2 than eighteen (18) years of age; and

3 (c). Third, that the Defendant could have been charged with a
4 criminal offense for engaging in the specified sexual activity.

5 The United States and the Defendant agree that in order to convict the
6 Defendant of Count 3, Travel with Intent to Have Sex with a Minor, in violation of
7 18 U.S.C. § 2423(b), the United States would have to prove beyond a reasonable
8 doubt the following elements:

9 (a). First, between on or about September 1, 2005, and on or about
10 September 4, 2005, the Defendant, TIMOTHY A. SHELLY,
11 knowingly traveled in interstate commerce, that is, from the
12 State of Michigan to Republic, Washington, in the Eastern
13 District of Washington; and

14 (b). Second, the Defendant's purpose in traveling in interstate
15 commerce was to engage in illicit sexual conduct with a minor.

16 5. Factual Basis and Statement of Facts:

17 The United States and the Defendant stipulate and agree that the following
18 facts are accurate; that the United States could prove these facts beyond a
19 reasonable doubt at trial; and these facts constitute an adequate factual basis for
20 TIMOTHY A. SHELLY's guilty plea. This statement of facts does not preclude
21 either party from presenting and arguing, for sentencing purposes, additional facts
22 which are relevant to the guideline computation or sentencing, unless otherwise
23 prohibited in this agreement.

24 On September 8, 2005, Detective Sharp of the Ferry County Sheriff's
25 Department was contacted by Detective Heck of the Wyandotte Police Department
26 located in Wyandotte, Michigan regarding the alleged sexual molestation of a 13
27 year old female residing in the City of Republic, Washington (located in Ferry
28 County, in the Eastern District of Washington). Specifically, Detective Heck

1 advised Detective Sharp that he had information that Timothy Shelly had been
2 communicating on the Internet with a 13 year old female in the Republic,
3 Washington area and that Shelly had flown from Michigan to Washington to visit
4 the 13 year old female over the labor day weekend in 2005. Defendant's wife
5 provided law enforcement with the computer from the Shelly home and
6 handwritten letters and notes, some of which provided flight information from
7 Michigan to Washington and directions to Republic, Washington. The case was
8 referred to Detective Sharp for further investigation.

9 On September 12, 2005, Detective Sharp contacted the parents of the victim
10 and informed them of the information provided to him by Detective Heck. They
11 indicated that they were aware of a Tim Shelly, but believed him to be the teenage
12 boyfriend of their daughter, not a 42 year old man. They gave Detective Sharp
13 consent to take their two home computers for forensic review and instructed their
14 daughter to provide the letters Shelly had sent her. The victim also advised
15 Detective Sharp that in approximately January of 2005, while she was chatting on
16 line with a friend, Shelly had sent her an instant message on Yahoo and that they
17 then began communicating on line. Initially Shelly provided a false name and age.
18 She indicated Shelly had sent her some candles, stuffed animals, a CD player, two
19 rings and a bracelet, and cell phones. She also indicated that she had emailed
20 images of herself to Shelly at his request.

21 On November 15, 2005, the mother of the victim contacted Detective Sharp
22 and informed him that Timothy Shelly had sent her daughter another cell phone
23 hidden in a stuffed animal. The mother also informed Detective Sharp that she
24 had overheard a conversation between her daughter and Timothy Shelly, in which
25 they discussed engaging in sexual relations when he had visited her in September
26 of 2005. The victim was re-interviewed by Detective Sharp and admitted that
27 when Timothy Shelly had visited her, she had "sucked" his penis and he had
28 placed his fingers inside her vagina.

1 Detective Sharp, thereafter, forwarded the matter to the Spokane FBI Office
2 for further investigation. Detective Sharp provided the Spokane FBI Office with
3 the Shelly computer and the two computers from the residence of the victim for
4 analysis.

5 On January 7, 2008, the victim was interviewed by FBI Special Agent Loza.
6 The victim confirmed that Timothy Shelly had flown from Michigan to
7 Washington and visited her over the Labor Day weekend (September 1-September
8 4) in 2005. She also confirmed that they engaged in oral sex on two separate
9 occasions during this weekend. The victim stated that she had originally met
10 Timothy Shelly on-line. Timothy Shelly first claimed to be 19 or 20 years old,
11 and then later admitted to her that he was 41 years old. The victim stated that
12 Timothy Shelly would ask her to show him her naked body via the web camera,
13 which she would do. Timothy Shelly would specifically ask her to show him her
14 vaginal area. Timothy Shelly informed her that he would save the images of her
15 naked body, including her vaginal area, and view them while they were having
16 phone sex.

17 Frontier Airline records revealed that a Timothy Shelly traveled on
18 September 1, 2005 from Detroit, Michigan to Spokane, Washington and returned
19 from Spokane, Washington to Detroit, Michigan on September 4, 2005.
20 Enterprise car rental records revealed that a Timothy Shelly rented a vehicle in
21 Spokane, Washington on September 1, 2005 through September 4, 2005. The
22 records also revealed that Timothy Shelly provided his residence was in
23 Wyandotte, Michigan.

24 On October 15, 2008, the owner of the Northern Inn located in Republic,
25 Washington, was shown the Michigan State Driver's License picture of Timothy
26 Shelly. The owner stated that she recognized Timothy Shelly. She explained that
27 on Labor Day weekend back in 2005, Timothy Shelly stayed at the Inn for two
28 days, September 1 and 2, 2005. On the third night, she informed Shelly that the

1 Inn was full. On the registration card for the Northern Inn, Timothy Shelly
2 provided his address as Wyandotte, Michigan.

3 A forensic analysis was performed by the FBI on the Shelly computer and
4 the two computers from the victim's residence. The forensic analysis revealed
5 numerous e-mails and chat sessions between Timothy Shelly and the victim
6 discussing such things as sex and the sending of pornographic images. The first
7 chat recovered is dated April 16, 2005 and the last chat recovered was on
8 September 7, 2005. The forensic analysis also revealed thousands of images of the
9 victim on the Shelly computer. The victim was naked in many of these images
10 and her vaginal area was exposed in over 700 of these images. Some of these
11 images depicted the victim inserting an object inside her vagina. The images were
12 reviewed by the FBI and determined to be child pornography, as that term is
13 defined by 18 U.S.C. § 2256(8).

14 The image files found on the Shelly computer were sent to the National
15 Center for Missing and Exploited Children (NCMEC). NCMEC found no
16 evidence that Defendant has distributed images of this victim to others via email
17 or the Internet.

18 6. The United States Agrees to Dismiss:

19 At the time of sentencing, the United States agrees to move to dismiss
20 Count 2 of the Indictment, which charges the Defendant with Production of Child
21 Pornography, in violation of 18 U.S.C. § 2251(a).

22 7. United States Sentencing Guideline Calculations:

23 The Defendant understands and acknowledges that the United States
24 Sentencing Guidelines (hereinafter "U.S.S.G."), effective November 1, 2004, are
25 applicable to this case and that the Court will determine the Defendant's
26 applicable sentencing guideline range at the time of sentencing.

1 (a.) Base Offense Level:

2 The United States and the Defendant agree that the base offense level for
3 Coercion of a Minor (Count 1) and Travel with Intent to Have Sex with a Minor
4 (Count 3) is 24. See U.S.S.G. §2G1.3(a).

5 (b.) Specific Offense Characteristics:

6 The United States and the Defendant also agree and stipulate that the base
7 offense is increased by an additional two (2) levels because the offense involved
8 the knowing misrepresentation of a participants' identity (originally the
9 Defendant misrepresented his age to the minor) to persuade, induce, entice, coerce,
10 or facilitate the travel of, a minor to engage in prohibited sexual conduct. See
11 U.S.S.G. §2G1.3(b)(2).

12 The United States and the Defendant also agree and stipulate that the base
13 offense is increased by an additional two (2) levels because the offense involved
14 the use of a computer to persuade a minor to engage in prohibited sexual conduct.
15 See U.S.S.G. §2G1.3(b)(3).

16 The United States and the Defendant also agree and stipulate that the base
17 offense is increased by an additional two (2) levels because the offense involved
18 the commission of a sexual act. See U.S.S.G. §2G1.3(b)(4)(A).

19 (c.) Acceptance of Responsibility:

20 If the Defendant pleads guilty and demonstrates a recognition and an
21 affirmative acceptance of personal responsibility for the criminal conduct;
22 provides complete and accurate information during the sentencing process; does
23 not commit any obstructive conduct; accepts this Plea Agreement; and enters a
24 plea of guilty no later than March 23, 2010, the United States will move for a three
25 (3) level downward adjustment in the offense level for the Defendant's timely
26 acceptance of responsibility, pursuant to U.S.S.G. §3E1.1(a) and (b).

27 The Defendant and the United States agree that the United States may at its
28 option and upon written notice to the Defendant, not recommend a three (3) level

1 downward reduction for acceptance of responsibility if, prior to the imposition of
2 sentence, the Defendant is charged or convicted of any criminal offense
3 whatsoever or if the Defendant tests positive for any controlled substance.

4 Furthermore, the Defendant agrees to pay the \$200 mandatory special
5 penalty assessment to the Clerk of Court for the Eastern District of Washington, at
6 or before sentencing, and shall provide a receipt from the Clerk to the United
7 States before sentencing as proof of this payment, as a condition to this
8 recommendation by the United States.

9 *Therefore, the United States and the Defendant agree that the Defendant's*
10 *final adjusted offense level would be 27.*

11 (c.) Criminal History:

12 The United States and the Defendant understand that the Defendant's
13 criminal history computation is tentative and that ultimately the Defendant's
14 criminal history category will be determined by the Court after review of the
15 Presentence Investigative Report. The United States and the Defendant have made
16 no agreement and make no representations as to the criminal history category,
17 which shall be determined after the Presentence Investigative Report is completed.

18 8. Departures:

19 There are aggravating factors with respect to the correct calculation of the
20 Sentencing Guidelines. The Government and Defendant agree that both the
21 Government and Defendant, TIMOTHY A. SHELLY, will seek an upward
22 departure of 5 levels from the applicable Guidelines, resulting in an adjusted
23 offense level of 32 and a sentencing guideline range of 121-151 months.

24 9. Incarceration:

25 Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Defendant, TIMOTHY A.
26 SHELLY, and the United States agree that the Defendant be sentenced to a term of
27 imprisonment of 12 years.

1 10. Criminal Fine:

2 The United States and the Defendant are free to make whatever
3 recommendation concerning the imposition of a criminal fine that they believe is
4 appropriate.

5 11. Supervised Release:

6 The United States and Defendant have not agreed to a term of supervised
7 release. The Defendant agrees to recommend a term of ten years, the United
8 States agrees it will recommend that the Court impose a lifetime term of
9 supervised release.

10 The United States and Defendant have agreed to recommend the Court
11 include the following special conditions, in addition to the standard conditions of
12 supervised release:

13 (1) that the Defendant not have any contact with the victim(s);

14 (2) that the Defendant not have contact with any child under the age of 18,
15 without the presence of an adult and approved in advance by the Probation
16 Officer, this includes prohibiting the Defendant from having any contact with any
17 child by telephone or the Internet. The Defendant shall immediately report any
18 unauthorized contact with minor-aged children to the Probation Officer;

19 (3) that the Defendant allow the Probation Officer or designee to conduct
20 random inspections, including retrieval and copying of data from any computer,
21 and any personal computing device that the Defendant possesses or has access to,
22 including any internal or external peripherals. This may require temporary
23 removal of the equipment for a more thorough inspection. The Defendant shall
24 not possess or use any data encryption technique or program. The Defendant shall
25 purchase and use such hardware and software systems that monitor the
26 Defendant's computer usage, if directed by the Probation Officer;

27 (4) that the Defendant shall not reside or loiter within 500 feet of places
28 where children under the age of 18 congregate, which includes primary and

1 secondary schools, schoolyards, parks, playgrounds, shopping malls, daycare
2 centers, carnivals, recreation centers, and arcades;

3 (5) that the Defendant shall not possess or manufacture any sexually
4 stimulating, sexually explicit or sexually oriented material including videos,
5 magazines, photographs, computer generated depictions, or any other matter that
6 depicts "sexually explicit conduct" involving children or adults, as defined by 18
7 U.S.C. § 2256(2). The Defendant shall not enter or be present at any
8 establishment involved in the sex industry, including adult book stores, massage
9 parlors, escort services, and strip bars. The Defendant shall not use any sex-
10 related adult telephone number. The Defendant shall provide all his telephone
11 records to monitor compliance, at the direction of the Probation Officer;

12 (6) that the Defendant register as a sex offender, according to the laws of
13 each state in which the Defendant resides, is employed, carries on a vocation, or is
14 attending school. The Defendant shall provide written verification of compliance
15 with this requirement to the Probation Officer;

16 (7) that the Defendant complete a sex offender evaluation, which may
17 include periodic psychological, physiological, polygraph, and completion of the
18 ABEL assessment, at the direction of the Probation Officer;

19 (8) that the Defendant participate and successfully complete an approved
20 state-certified sex offender treatment program, including compliance with all
21 lifestyle restrictions and treatment requirements of the program. The Defendant
22 shall allow reciprocal release of information between the Probation Officer and the
23 treatment provider. The Defendant shall contribute to the cost of treatment
24 according to the Defendant's ability to pay.

25 12. Restitution:

26 The victim in this case indicates she does not seek restitution.
27
28

1 13. Mandatory Special Penalty Assessment:

2 The Defendant agrees to pay the \$200 mandatory special penalty assessment
3 to the Clerk of Court for the Eastern District of Washington, at or before
4 sentencing, pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the
5 Clerk to the United States before sentencing as proof of this payment.

6 14. Payments While Incarcerated:

7 If the Defendant lacks the financial resources to pay the monetary
8 obligations imposed by the Court, the Defendant agrees to earn the money to pay
9 toward these obligations by participating in the Bureau of Prisons' Inmate
10 Financial Responsibility Program.

11 15. Forfeiture:

12 The Defendant TIMOTHY A. SHELLY, agrees to voluntarily forfeit
13 and relinquish all right, title and interest in all assets identified in the forfeiture
14 allegation of the Indictment, to the United States, to include the following:

15 -Computer hard drive, serial number WMA9P1666869

16 The Defendant stipulates that he is the sole owner of the asset identified in
17 the Indictment and that no one else has an interest in the asset.

18 The Defendant acknowledges that the asset listed above that the Defendant
19 is agreeing to forfeit is subject to forfeiture pursuant to 18 U.S.C. § 2428, as
20 property used or intended to be used to commit or to facilitate the commission of
21 the Coercion of a Minor offense charged in Count 1, and the Travel with Intent to
22 Have Sex with a Minor offense charged in Count 3 of the Indictment. The
23 Defendant agrees to take all steps as requested by the United States to pass clear
24 title to the asset to the United States and to testify truthfully in any forfeiture
25 proceeding.
26

27 The Defendant agrees to hold all law enforcement agents/officers, and the
28 United States, its agents, and its employees harmless from any claims whatsoever

1 arising in connection with the seizure and forfeiture of any asset covered by this
2 agreement.

3 The Defendant waives further notice of any federal, state or local
4 proceedings involving the forfeiture of the seized asset the Defendant is agreeing
5 to forfeit in this Plea Agreement.

6 16. Additional Violations of Law Can Void Plea Agreement:

7 The Defendant and the United States agree that the United States may at its
8 option and upon written notice to the Defendant, withdraw from this Plea
9 Agreement or modify its recommendation for sentence if, prior to the imposition
10 of sentence, the Defendant is charged or convicted of any criminal offense
11 whatsoever or if the Defendant tests positive for any controlled substance.

12 17. Appeal Rights:

13 In return for the concessions that the United States has made in this Plea
14 Agreement, the Defendant agrees to waive the right to appeal the sentence if the
15 Court imposes a prison term of no longer than 12 years. Defendant hereby
16 expressly waives his right to appeal his conviction. Defendant further expressly
17 waives his right to file any post-conviction motion attacking his conviction and
18 sentence if it is 12 years, including a motion pursuant to 28 U.S.C. § 2255 (writ of
19 habeas corpus), except one based upon ineffective assistance of counsel based on
20 information not now known by Defendant and which, in the exercise of due
21 diligence, could not be known by Defendant by the time the Court imposes the
22 sentence.

23 Should the Defendant successfully move to withdraw from this Plea
24 Agreement or should the Defendant's conviction on Count 1 or Count 3 of the
25 Indictment be dismissed, set aside, vacated, or reversed, this Plea Agreement shall
26 become null and void; the United States may move to reinstate all counts of
27
28

1 Indictment No. 09-CR-0089-RHW; and the United States may prosecute the
2 Defendant on all available charges involving or arising from the Indictment .

3 18. Notice of Sex Offender Registration:

4 The Defendant has been advised and understands, that as a convicted sex
5 offender, under the Sex Offender Registration and Notification Act, a federal law,
6 the Defendant must register and keep the registration current in each of the
7 following jurisdictions: the location of the Defendant's residence, the location of
8 the Defendant's employment; and, if the Defendant is a student, the location of the
9 Defendant's school. Registration will require that the Defendant provide
10 information that includes name, residence address, and the names and addresses of
11 any places at which the Defendant is or will be an employee or a student. The
12 Defendant understands that he must update his registrations not later than three
13 business days after any change of name, residence, employment, or student status.
14 The Defendant understands that failure to comply with these obligations subjects
15 the Defendant to prosecution for failure to register under federal law, 18 U.S.C. §
16 2250, which is punishable by a fine or imprisonment, or both.

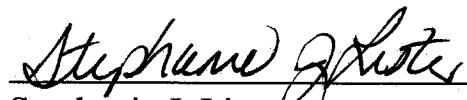
17 19. Integration Clause:

18 The United States and the Defendant acknowledge that this document
19 constitutes the entire Plea Agreement between the United States and the
20 Defendant, and no other promises, agreements, or conditions exist between the
21 United States and the Defendant concerning the resolution of the case. This Plea
22 Agreement is binding only upon the United States Attorney's Office for the
23 Eastern District of Washington, and cannot bind other federal, state or local
24 authorities. The United States and the Defendant agree that this agreement cannot
25 be modified except in a writing that is signed by the United States and the
26 Defendant.

Approvals and Signatures

Agreed and submitted on behalf of the United States Attorney's Office for
the Eastern District of Washington.

James A. McDevitt
United States Attorney



Stephanie J. Lister
Assistant U.S. Attorney

3/23/10
Date

I have read this Plea Agreement and have carefully reviewed and discussed every part of the agreement with my attorney. I understand and voluntarily enter into this Plea Agreement. Furthermore, I have consulted with my attorney about my rights, I understand those rights, and I am satisfied with the representation of my attorney in this case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement and no one has threatened or forced me in any way to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.

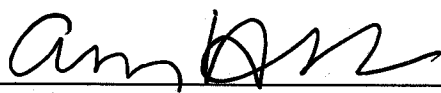


TIMOTHY A. SHELLEY
Defendant

3/23/10
Date

I have read the Plea Agreement and have discussed the contents of the agreement with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement between the parties. I concur in my client's

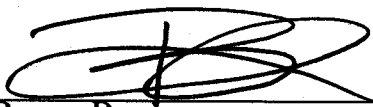
1 decision to plead guilty as set forth in the Plea Agreement. There is no legal
2 reason why the Court should not accept the Defendant's plea of guilty.

3 

4 Amy H. Rubin
5 Attorney for the Defendant

3/23/10

Date

6
7 

8 Roger Peven
9 Attorney for the Defendant

3.23.10

Date